



Missouri Sentencing Advisory Commission

NOTE:

SMART SENTENCING INVOLVES USING THE LATEST IN STATISTICS, INFORMATION, RESEARCH FINDINGS AND EVIDENCED-BASED PRACTICE TO MAKE INFORMED DECISIONS ABOUT HOW TO PUNISH CRIMINAL BEHAVIOR.

THE SENTENCING ADVISORY COMMISSION HAS LAUNCHED THIS PERIODIC BULLETIN TO KEEP JUDICIAL DECISION MAKERS CURRENT AS TO THE LATEST INFORMATION RELATED TO SENTENCING PRACTICES AND THEIR IMPACTS. THE BULLETIN IS BEING DISTRIBUTED TO JUDGES, PROSECUTORS, PUBLIC DEFENDERS, PROBATION OFFICERS AND THE PUBLIC VIA EMAIL AND ON THE SAC WEB SITE AT WWW.MOSAC.MO.GOV.

COMMENTS AND SUGGESTIONS ARE WELCOME AND SHOULD BE SENT TO SMART.SENTENCING@COURTS.MO.GOV.

MOSAC

*Is dedicated to supporting
public safety, fairness and
effectiveness in criminal
sentencing.*

SMART SENTENCING

VOLUME 2, ISSUE 6

NOVEMBER 3, 2010

SENTENCING ADVISORY COMMISSION MAKES CHANGES IN SYSTEM OF RECOMMENDED SENTENCES, SENTENCING ASSESSMENT REPORT

Following a report of a subcommittee appointed to study proposals to change the system of recommended sentences, the Missouri Sentencing Advisory Commission at its September 2010 meeting voted to make changes to address concerns expressed that the statistically derived recommendations do not always fit the circumstances of a particular offense.

The subcommittee consisted of three commission members – Presiding Judge Gary Oxenhandler of the 13th Judicial Circuit (Boone and Callaway counties), Shelby County Prosecutor James McConnell and St. Louis attorney Nancy Watkins, who is a member of the Missouri Public Defender Commission. Also attending the sentencing advisory commission meeting, in addition to commission members, were representatives from the prosecuting attorneys' association, the public defender program and the department of corrections. The subcommittee report summarized many concerns that recommended sentences cannot always adequately reflect all the circumstances that apply in individual sentencing decisions.

Following extensive discussion, the commission approved five changes that will impact the recommended sentences and the content of the sentencing assessment report (SAR) that is prepared by local officers of the board of probation and parole.

1. For violent class A felonies and class A, B and unclassified felonies involving sex or child abuse, an “aggravating” sentence recommendation will be expressed as a range of punishment – from the statistically derived “aggravating” sentence to the highest punishment authorized by law.

This change will extend the range of the aggravating sentence to allow crimes with particularly serious circumstances to have the recommended sentence include the most severe punishment authorized by statute.

2. For all felonies, a plea or finding of guilt to other offenses that will be sentenced at the same time will be listed as an “aggravating” circumstance.

The new aggravating circumstance will apply to all offense groups. Multiple offenses include offenses committed at the same time and prior offenses that will be sentenced on the same day and in the same court.

3. The name of the mid-range recommended sentence will be changed to “Typical” from its current description, “Presumptive.”

“Typical” will emphasize that the recommended sentence reflects an average statewide sentence without inadvertently implying a condition that the sentence be a strict arithmetic average of actual sentences. Recommended sentences do reflect average sentences, but they also take into account the severity of the offense and the level of prior criminal history of the offender. “Presumptive” inadvertently gave some the impression that it was the prescribed sentence.

4. When there is more than one plea or finding of guilt for separate offenses to be sentenced at the same time, the SAR will list the recommended sentences for each of the other felonies. It is up to the judge whether the sentences will run concurrently or consecutively.

In many of the instances of recommended sentences deemed inadequate by the prosecutors’ group that the subcommittee reviewed, the

actual sentence the judge imposed included consecutive sentences. This change will require the department of corrections to review the ability of the existing computer program to list multiple recommended sentences in the SAR. The department has decided to defer review of this change until after its conversion of the SAR to the new Missouri Computer Integrated System (MO-CIS), scheduled for completion in June 2011.

5. A further clarification has been made to the wording in the conclusion section of the SAR that describes cases in which the SAR risk assessment or STATIC-99 sex offender risk score can be used as a mitigating or aggravating condition for recommended sentencing purposes. The current wording suggests that the risk assessment takes precedence over other aggravating or mitigating conditions. For example, a low risk score (labeled as “Good”) would be a mitigating factor but should not necessarily outweigh aggravating factors, such as violence at the time of arrest or the fact that the offender was on probation or parole at the time of the offense. The purpose of using the risk assessment in the recommended sentence is to provide a measure of future recidivism by the offender for consideration in the sentencing decision.

The new wording in the conclusion section of the SAR will be:

Unless there are aggravating circumstances, the Sentencing Commission recommendation will be the mitigating sentence when the risk score is “Good” (low risk). Alternatively, when the risk score is “Below Average” or “Poor” (high risk) and there are no mitigating circumstances, the Sentencing Commission recommendation will be the aggravating sentence. In instances in which the risk score is “Average” or “Above Average” (medium risk) and there is no mitigating or aggravating circumstance, the Sentencing Commission recommendation will be the “Typical” sentence.

Other proposals relating to aggravating and mitigating circumstances were deferred for further review. The commission also voted against the prosecutors’ proposal to remove the recommended sentences for violent, sex and serious nonviolent offenses, opting instead to include the highest possible punishment in the recommendation for an “aggravating” sentence.

The commission’s purpose in making these changes is to help judges – as well as prosecutors and defense attorneys – decide on punishments that are proportionate to the offense and that will tend

to avoid recidivism. The changes will be included in the fiscal 2011-2012 user guide, expected to be published later this month. The department of corrections has reviewed the changes required to the SAR and will incorporate into the SARs by the end of the calendar year _____ the changes that do not require programming amendment (changes 1, 3 and 5, above). The changes to the automated sentencing information tool on the commission’s website, www.mosac.mo.gov, are not

expected to require programming amendment and, therefore, also are expected to be made by the end of the calendar year.

The goal of the sentencing recommendations remains the same – to give as much useful information as possible to help inform sentencing decisions. Whether and how the information is used in a particular case is up to the judge, because discretion is at the heart of all sentencing in Missouri.

**“ ... discretion is
at the heart
of all sentencing
in Missouri.”**